

RECORDATION NO. 29387 FILED

JUL 28 '10 -1 30 PM

SURFACE TRANSPORTATION BOARD

ALVORD AND ALVORD
ATTORNEYS AT LAW
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SUITE 301
WASHINGTON, D C
20036

ELIAS C. ALVORD (1942)
ELLSWORTH C. ALVORD (1964)

OF COUNSEL
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July 28, 2010

Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D C 20423

Re: Wisconsin and Southern Railroad Company

Dear Section Chief,

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of an Assignment and Assumption Agreement, dated as of July 28, 2010, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Foreclosing

Lender/Lessor: Wells Fargo Bank Northwest, National
Association
299 South Main Street, 12th Floor
Salt Lake Cit, UT 84111

Buyer:

First Union Rail Corporation
One O'Hare Center
6250 River Road, Suite 5000
Rosemont, IL 60018

Chief
Section of Administration
July 28, 2010
Page 2

A description of the railroad equipment covered by the enclosed document is:

Lease No. 22 - 148 railcars within the series AOK 29580 - AOK 29729 as more particularly set forth in the attachment to the document.


A short summary of the document to appear in the index is:

Assignment and Assumption Agreement

Also enclosed is a check in the amount of \$41.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Alvord', with a long horizontal stroke extending to the right.

Robert W. Alvord

RWA/sem
Enclosures

JUL 28 '10 -1 30 PM

EXECUTION COPY

~~SURFACE TRANSPORTATION BOARD~~
ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement dated as of July 28, 2010 (this "Agreement"), is between (a) **WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION**, as security trustee (the "Security Trustee") under that certain Amended and Restated Security Agreement, dated as of December 15, 2006 (as amended, supplemented and modified from time to time, the "Security Agreement"), among the Security Trustee, BBRX One LLC, as borrower (the "Original Borrower"), Hypo Public Finance USA, LLC (as successor to Hypo Public Finance, Inc.), as senior lender (in such capacity as senior lender, the "Original Senior Lender"), Wells Fargo Bank Northwest, National Association, as mezzanine agent (in such capacity, the "Original Mezzanine Agent"), Hypo Public Finance USA, LLC (as successor to Hypo Public Finance, Inc.), as agent for the Original Senior Lender (the "Original Senior Agent") and the mezzanine lenders named therein (collectively, in such capacity as mezzanine lenders, the "Original Mezzanine Lenders"), and which Security Trustee is hereby acting as the foreclosing secured party and, in such capacity as foreclosing lender, is acting for and on behalf of the Original Borrower, as lessor (in such capacity, the "Lessor") and (b) **FIRST UNION RAIL CORPORATION**, a North Carolina corporation (the "Buyer"). Capitalized terms used herein without definition shall have the meanings ascribed thereto in the Purchase Agreement (defined below), which also contains rules of usage that apply to terms defined therein and herein.

RECITALS:

A. WHEREAS, the Security Trustee is the security trustee under the Security Agreement, which secures the obligations owed to the Agent and the Lenders under that certain Amended and Restated Senior Loan Agreement, dated as of December 15, 2006 (as amended, supplemented and modified from time to time, the "Loan Agreement"), among Original Borrower, as borrower, the Original Senior Lender, as lenders, and the Original Senior Agent and under the other Loan Documents (as defined in the Loan Agreement).

B. WHEREAS, the Seller has agreed to sell to the Buyer the Railcar Collateral Assets pursuant to a public foreclosure sale (the "Foreclosure", and Buyer's acquisition of the Railcar Collateral Assets through the Foreclosure, the "Foreclosure Acquisition") conducted in accordance with Sections 9-610 and 9-613 of the Uniform Commercial Code in effect in the State of New York (the "U.C.C.").

C. WHEREAS, the Buyer is acquiring the Railcar Collateral Assets at the Foreclosure for a cash payment in accordance with the terms of a Purchase Agreement, dated as of July 22, 2010 (the "Purchase Agreement") between the Seller and the Buyer.

D. WHEREAS, the Purchase Agreement contemplates the execution and delivery of this Agreement by the Security Trustee, acting as foreclosing lender and lessor, and the Buyer.

E. WHEREAS, through this Agreement and in accordance with the terms hereof, Seller, as the Security Trustee, in its capacity as the foreclosing secured party and Lessor, desires to effect the sale of the Railcar Collateral Assets to the Buyer through the Foreclosure, and the Buyer desires to acquire from the Seller, as the foreclosing lender, all of the rights, title and

interest currently held by the Seller (including, the right, title and interest of the Original Borrower) in and to the Railcar Collateral Assets, and, in conjunction therewith, the Buyer desires to assume all of the Seller's and the Original Borrower's right, title and interest and obligations under the Leases, all upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows.

1. Assignment. Effective as to each item of Equipment from and after the date hereof, the Lessor hereby assigns, transfers and conveys to the Buyer all of the Lessor's respective rights, title and interest, in and to such item of Equipment listed on Exhibit A hereto and assigns to the Buyer all of the Lessor's rights and obligations, under each of the Leases listed on Exhibit A hereto (collectively, the "Assigned Operative Agreements").

Notwithstanding the foregoing, each of the Lessor and the Buyer shall continue to be entitled to the benefit of any applicable rights to indemnification for tax and other matters which arose or may arise from or be related to any event or circumstance occurring or in existence prior to the date hereof, as specified in the Purchase Agreement.

2. Acceptance of Assignment; Effect of Assignment. The Buyer accepts the assignment contained in Section 1 and agrees to be bound to the same extent as the Original Borrower by all the terms of the Assigned Operative Agreements. Effective on and after the date hereof, after giving effect to the transaction described herein, the Buyer shall be deemed to stand in the place of the Original Borrower for all purposes under the applicable Assigned Operative Agreements and each reference in the Assigned Operative Agreements to the Original Borrower shall be deemed to mean the Buyer from and after the date hereof.

3. Amendments. No provision of this Agreement may be amended, modified or waived except by written agreement duly executed by each of the parties hereto.

4. Notices. All notices, requests or other communications to or upon any party hereto in connection herewith shall be given in the manner prescribed by Section 10.5 of the Purchase Agreement.

5. Headings. The section headings used in this Agreement are for convenience of reference only and shall not be used or construed to define, interpret, expand or limit any provision hereof.

6. Counterparts. This Agreement may be executed in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

7. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the conflict of law rules thereof, other than Section 5-1401 of the New York General Obligations Law.

8. Recordation. The Buyer and the Lessor agree to record this Agreement with the Surface Transportation Board and with the Registrar General of Canada, if applicable, to evidence the assignment by the Lessor to the Buyer of the Lessor's rights under the Lease, if and only if the Lease has been recorded with the Surface Transportation Board and/or the Registrar General of Canada, as the case may be.

9. Further Assurances. Each of the parties hereto covenants and agrees that, at any time and from time to time after the date hereof, at the request and expense of the requesting party hereto, it will promptly and duly execute and deliver, or cause to be executed and delivered, to the requesting party all such further instruments and take all such further action as may be reasonably requested by such party to more effectively sell, transfer, assign, and convey each item of Equipment.

10. Binding Agreement. This Agreement shall be binding upon the Lessor and the Buyer, their respective successors and permitted assigns, for the use and purposes set forth and referred to herein, effective as of the date hereof.

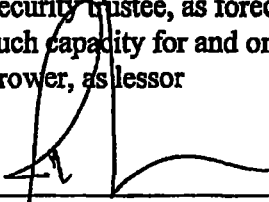
[Remainder of page intentionally left blank]

[Assignment and Assumption]

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

**WELLS FARGO BANK NORTHWEST,
NATIONAL ASSOCIATION**

as security trustee, as foreclosing lender acting
in such capacity for and on behalf of Original
Borrower, as lessor

By: 
Name: Jon Croasmun
Title: Vice President

**FIRST UNION RAIL CORPORATION,
as Buyer**

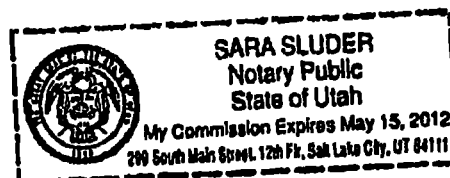
By: _____
Name: _____
Title: _____

State of Utah)
):
County of Salt Lake)

On this, the 27th day of July, 2010, before me, a Notary Public in and for said County and State, personally appeared Jon Croasmun, who acknowledged himself/herself to be a duly authorized person of **WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION**, as security trustee, as foreclosing lender acting for and on behalf of Original Borrower, as lessor, and that, as such duly authorized person, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.





[Assignment and Assumption]

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been duly executed by the parties hereto as of the date first above written.

WELLS FARGO BANK NORTHWEST,
NATIONAL ASSOCIATION
as security trustee, as foreclosing lender acting
in such capacity for and on behalf of Original
Borrower, as lessor

By: _____
Name:
Title:

FIRST UNION RAIL CORPORATION,
as Buyer

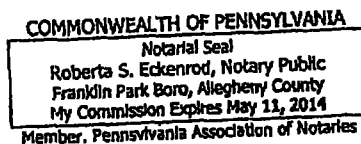
By: Rob Blankemeyer
Name: Rob Blankemeyer
Title: Vice President

State of Pennsylvania)
County of Allegheny)

On this, the 11th day of July, 2010, before me, a Notary Public in and for said County and State, personally appeared Rob Blankemeyer, a Vice President of First Union Rail Corporation, who acknowledged himself/herself to be a duly authorized officer of First Union Rail Corporation, and that, as such officer, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date above mentioned.

Name: _____



Notary Public

My Commission Expires: May 11, 2014

Residing in: Franklin Park, Allegheny County, PA

Exhibit A
(TO ASSIGNMENT AND ASSUMPTION AGREEMENT)
EQUIPMENT AND LEASES

BBRX EQUIPMENT & LEASE LIST

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
1	Georgia Power Company	116	2005	FreightCar America, Inc.	K341	4200 CF Aluminum body Rotary Autoflood III™, open top coal hoppers, 286,000 lbs. GRL	GALX 8011 - GALX 8126	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
2	BNSF Railway Company	134	2005	FreightCar America, Inc.	K341	4200 CF Aluminum body Rotary Autoflood III™, open top coal hoppers, 286,000 lbs. GRL	BNBX 50001-50009, inclusive; 50011-50054, inclusive; 50056-50060, inclusive; 50062-50070, inclusive; 50072-50078, inclusive; 50081-50082, inclusive; 50084-50119, inclusive; 50129, 50164, 50171, 50179-50184, inclusive; 50187-50190, inclusive; 50195, 50201, 50206, 50220, 50237, 50243-50244, inclusive; 50246, 50249	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
3	Columbus & Greenville Railway	50	1980	Trinity Industries	E530	2494 CF 50' mill gondola railcars equipped with 5' sides, 263,000 lbs. GRL	CAGY 2101 - CAGY 2150	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
4	CSX Transportation	123	1980	Trinity Industries	E530	2494 CF 50' mill gondola railcars equipped with 5' sides, 263,000 lbs. GRL	(Reporting Marks attached as Annex A at end of document)	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
5	Louisiana & North West Railroad	19	1980	Trinity Industries	E530	2494 CF 50' mill gondola railcars equipped with 5' sides, 263,000 lbs. GRL	AOK 350569, 350578, 350607, 350624, 350629, 250638, 350641, 350648, 350650, 350664-350666, inclusive; 350678, 350681-350682, inclusive; 350705, 350728, 350741, 350744	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
6	Consolidated Grain and Barge Co. (Reporting Mark AOK has or will be remarked to a BNBX mark)	19	1980	Trinity Industries	E530	2494 CF 50' mill gondola railcars equipped with 5' sides, 263,000 lbs. GRL	AOK 350521 AOK 350568 AOK 350598 AOK 350601 AOK 350604 AOK 350634 AOK 350656 AOK 350680 AOK 350689 AOK 350706 AOK 350707 AOK 350719 AOK 350723 AOK 350738 AOK 350750 BNBX 350523 BNBX 350543 BNBX 350592 BNBX 350674	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
7	Ohio Central Railroad, Inc.	35	1980	Trinity Industries	E530	2494 CF 50' mill gondola railcars equipped with 5' sides, 263,000 lbs. GRL	AOK 350501, 350503, 350505, 350510, 350513, 350516-350519, inclusive; 350524, 350530,-350531, inclusive; 350535-350537, inclusive; 350539-350540, inclusive; 350544-350545, inclusive; 350547, 350549, 350554-350555, inclusive; 350560, 350564, 350566, 350570-350573, inclusive; 350576, 350579, 350584-350585, inclusive; 350688	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
8	Canadian National Railway Company	230	2005	FreightCar America, Inc.	J311	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	CNA 193000-193229, inclusive	None
9	Northern Indiana Public Service Company	125	2005	FreightCar America, Inc.	J311	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	NORX 9001-9125, inclusive	None
10	Coaltrade LLC	135	2005	FreightCar America, Inc.	J311	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	BNBX 853001-853135, inclusive	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
11	Tennessee Valley Authority #1 (Schedule No. 1)	125	2005	FreightCar America, Inc.	K341	4200 CF Aluminum body Rotary AutoFlood III™ open top coal hoppers, 286,000 lbs. GRL	TVAX 25125, 25127-25142, inclusive; 25144-25151, inclusive; 25153-25202, inclusive; 25204-25227, inclusive; 25229-25249, inclusive; 25253, and 25255-25258, inclusive	None
12	Tennessee Valley Authority #2 (Schedule No. 2)	125	2005	FreightCar America, Inc.	K341	4200 CF Aluminum body Rotary AutoFlood III™ open top coal hoppers, 286,000 lbs. GRL	TVAX 25126, 25143, 25152, 25203, 25228, 25250-25252, inclusive; 25254, and 25259-25374, inclusive	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
13	Tennessee Valley Authority #3 (Schedule No. 3)	125	2005	FreightCar America, Inc.	J311	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	TVAX 2500-25124, inclusive	None
14	Tennessee Valley Authority #4 (Schedule No. 4)	123	2005	FreightCar America, Inc.	K431	4200 CF Aluminum body Rotary AutoFlood III™ open top coal hoppers, 286,000 lbs. GRL	TVAX 25375, 25376, 25378 – 25389, inclusive; 25391 – 25430, inclusive; 25432-25476, inclusive, 25479-25490, inclusive; 25493 – 25502, inclusive; and 25505 – 25506, inclusive	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
15	Lower Colorado River Authority	135	2005	FreightCar America, Inc.	J311	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, 286,000 lbs. GRL	FPPX 6000-6089, inclusive; and LCRX 6090-6134, inclusive	None
16	Alabama Power Company #1	125	2005	FreightCar America, Inc.	K341	4200 CF Aluminum body Rotary Autoflood III™ open top coal hoppers, 286,000 lbs. GRL	JHMX 05001-05125, inclusive	None
17	Alabama Power Company #2	119	2005	FreightCar America, Inc.	K341	4200 CF Aluminum body Rotary Autoflood III™ open top coal hoppers, 286,000 lbs. GRL	JHMX 05126-05148, inclusive; 05150-05171, inclusive; 05173-05189, inclusive; 05192-05195, inclusive; 05197-05209, inclusive; 05211-05250, inclusive	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
18	Potlatch Corporation	40	2005	American Railcar Industries	F483	73' 110-ton riserless deck center partition flatcars with fabricated top chords, 286,000 lbs. GRL	AOK 27900 - 27939, inclusive	None
19	Union Pacific Railroad Company #2	220	2005	FreightCar America, Inc.	K341	Rapid discharge coal hopper railcars	CMO 504000-504004, inclusive; 504015-504018, inclusive; 504020-504031, inclusive; 504034-504069, inclusive; 504071-504074, inclusive; 504078-504079, inclusive; 504083-504239, inclusive	None

<u>Lease #</u>	<u>Lessee</u>	<u># Cars</u>	<u>Year Built</u>	<u>Manufacturer</u>	<u>AAR Code</u>	<u>Description</u>	<u>Reporting Marks</u>	<u>Casualty Marks</u>
20	Anthony Forest Products Inc.	25	2005	American Railcar Industries	F483	73' 110-ton riserless deck center partition flatcars with fabricated top chords, 286,000 lbs. GRL	AOK 26965-26989, inclusive	None
21	Bountiful Grain and Craig Mountain Railroad STORAGE LEASE	75	2005	American Railcar Industries	F483	73' center partition flatcars with flat floors and non-tapered center partitions, 286,000 lbs. GRL	AOK 26700-26774, inclusive	None
22	Wisconsin and Southern Railroad Company STORAGE LEASE	148	2005	American Railcar Industries	F483	73' center partition flatcars with flat floors and non-tapered center partitions, 286,000 lbs. GRL	AOK 29580-29645, inclusive; and AOK 29647-29697, inclusive; 29699-29729, inclusive	None

Annex A

Reporting Marks CSX Transportation

AOK 350502, 350504, 350506-350509, inclusive; 350511-350512, inclusive; 350514-350515, inclusive; 350520, 350522, 350525-350526, inclusive; 350528-350529, inclusive; 350532-350534, inclusive; 350538, 350541-350542, inclusive; 350546, 350548, 350550-350553, inclusive; 350557-350559, inclusive; 350561-350563, inclusive; 350565, 350567, 350574, 350577, 350580-350581, inclusive; 350583, 350586-350589, inclusive; 350591, 350594, 350600, 350602, 350605-350606, inclusive; 350609-350610, inclusive; 350614-350616, inclusive; 350618-350623, inclusive; 350626-350628, inclusive; 350630, 350632-350633, inclusive; 350639, 350643-350644, inclusive; 350646-350647, inclusive; 350652, 350654-350655, inclusive; 350657-350658, inclusive; 350662-350663, inclusive; 350667-350669, inclusive; 350672-350673, inclusive; 350675, 350683-350684, inclusive; 350686, 350690-350692, inclusive; 350694-350696, inclusive; 350698-350700, inclusive; 350703-350704, inclusive; 350709-350712, inclusive; 350714, 350716, 350718, 350720-350722, inclusive; 350724, 350726-350727, inclusive; 350729, 350731-350732, inclusive; 350734, 350736-350737, inclusive; 350739, 350742, 350745-350746, inclusive.

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: _____

7/28/10



Robert W. Alvord